

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

United States Court of Appeals  
Fifth Circuit

**FILED**

April 5, 2010

Lyle W. Cayce  
Clerk

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No. 08-30950

Summary Calendar

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ROBERT MELANCON,

Petitioner-Appellant

v.

KELLY WARD, Warden,

Respondent-Appellee

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
USDC No. 2:07-CV-5877

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Before HIGGINBOTHAM, CLEMENT, and SOUTHWICK, Circuit Judges.

PER CURIAM:\*

In August 1996, Robert Melancon, Louisiana prisoner # 371029, was convicted by jury verdict of aggravated rape of a male under the age of twelve and was sentenced to life imprisonment. He now appeals from the district court's denial of his 28 U.S.C. § 2254 application.

Melancon argues that he did not receive a fair trial because adverse pretrial publicity saturated the community from which the jury was drawn, thereby raising the presumption that he suffered prejudice from jury bias. To

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

the extent that he argues that he also did not receive a fair trial due to prosecutorial animus, that argument is not cognizable because it was not encompassed by the district court's grant of a certificate of appealability. See *Richardson v. Quarterman*, 537 F.3d 466, 472 n.2 (5th Cir. 2008).

Melancon has failed to show that the state appellate court's resolution of this issue warrants relief under 28 U.S.C. § 2254(d). See *Busby v. Dretke*, 359 F.3d 708, 713 (5th Cir. 2004). Accordingly, the judgment of the district court is AFFIRMED.